



**MINUTES
FREMONT PLANNING COMMISSION
REGULAR MEETING OF OCTOBER 24, 2002**

CALL TO ORDER: Vice Chairperson Arneson called the meeting to order at 7:00 p.m.

PRESENT: Vice Chairperson Arneson, Cohen, Harrison, Thomas, Weaver, Wieckowski

ABSENT: Manuel (Death in the immediate family.)

STAFF PRESENT: Jeff Schwob, Senior Planner
Christine Daniel, Senior Deputy City Attorney
Mitch Moughon, Senior Civil Engineer
Andrew Russell, Associate Civil Engineer
Kathleen Livermore, Senior Planner
Barbara Meerjans, Associate Planner
Matt Foss, Planner I
Laura Gonzalez-Escoto, Deputy Redevelopment Agency Director
Rick Judd, Consulting Attorney
Alice Malotte, Recording Clerk
Chavez Company, Remote Stenocaptioning
Michael Lydon, Video Technician

APPROVAL OF MINUTES: None

THE CONSENT LIST CONSISTED OF ITEM NUMBERS 1, 5, 6 AND 7.

IT WAS MOVED (WEAVER/THOMAS) AND UNANIMOUSLY CARRIED BY ALL PRESENT THAT THE PLANNING COMMISSION TAKE THE FOLLOWING ACTIONS ON ITEM NUMBERS 1 AND 5.

Item 1. LU RESIDENCE GARAGE – 4661 St. Francis Terrace – (PLN2003-00053) – to consider a Minor Amendment to a Planned District for the construction of a 1,164 sq. ft detached garage/workshop on property located at 4661 St. Francis Terrace in the Mission San Jose Planning Area. This project is categorically exempt from CEQA under Section 15303(e) as it relates to the construction of an accessory structure. (Continued from October 10, 2002.)

HOLD PUBLIC HEARING;

AND

FIND PLN2003-00053 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN, ZONING ORDINANCE AND HILL AREA DEVELOPMENT POLICIES;

AND

APPROVE PLN2003-00053, AS SHOWN IN EXHIBIT "A" AND ON THE COLOR AND MATERIAL BOARD (EXHIBIT "C"), SUBJECT TO THE CONDITIONS OF APPROVAL SET FORTH IN EXHIBIT "B".

- Item 5. SADDLE RACK NIGHTCLUB – 42011 Boscell Road – (PLN2003-00038)** - to consider a Conditional Use Permit for a nightclub for developed property located in the Industrial Planning Area. This project is categorically exempt from CEQA review under Section 15332, In-Fill Development Projects.

CONTINUE TO CONTINUE TO NOVEMBER 7, 2002.

The motion carried by the following vote:

AYES: 6 – Arneson, Cohen, Harrison, Thomas, Weaver, Wieckowski
NOES: 0
ABSTAIN: 0
ABSENT: 1 – Manuel
RECUSE: 0

IT WAS MOVED (HARRISON/WEAVER) AND UNANIMOUSLY CARRIED BY ALL PRESENT THAT THE PLANNING COMMISSION TAKE THE FOLLOWING ACTION ON ITEM NUMBER 6.

- Item 6. DHAM RESIDENCE GRADING & LANDSCAPING – 1130 Highland Terrace – (PLN2003-00041)** – to consider a Planned District Minor Amendment to P-96-11 and Preliminary Grading Plan for changes to grading and landscaping for a previously approved new single family residence. This project is categorically exempt from CEQA review under Section 15303, New Construction or Conversion of Small Structures.

CONTINUE TO NOVEMBER 21, 2002.

The motion carried by the following vote:

AYES: 5 – Arneson, Harrison, Thomas, Weaver, Wieckowski
NOES: 0
ABSTAIN: 0
ABSENT: 1 – Manuel
RECUSE: 1 – Cohen: A separate vote was taken for Item 6, as Commissioner Cohen recused himself because the applicant was a former client.

IT WAS MOVED (WIECKOWSKI/THOMAS) AND UNANIMOUSLY CARRIED BY ALL PRESENT THAT THE PLANNING COMMISSION TAKE THE FOLLOWING ACTION ON ITEM NUMBER 7.

- Item 7. CENTER THEATER – 37411 Fremont Boulevard & 4036 Beloveria Court – (PLN2003-00085)** - to consider a Conditional Use Permit application to operate a performing arts and dinner theater, movie theater, and a partial waiver of parking space requirements. This project is categorically exempt from CEQA review under Section 15332, In-Fill Development Projects.

HOLD PUBLIC HEARING;

AND

FIND THIS PROJECT EXEMPT FROM EXEMPT FROM CEQA REVIEW UNDER SECTION 15332, IN-FILL DEVELOPMENT PROJECTS;

AND

FIND PLN2003-00085 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE AND LOCAL ECONOMY CHAPTERS AS ENUMERATED WITHIN THE STAFF REPORT;

AND
APPROVE PLN2003-00085, AS SHOWN ON EXHIBIT "A", SUBJECT TO FINDINGS AND
CONDITIONS ON EXHIBIT "B".

The motion carried by the following vote:

AYES: 5 – Arneson, Cohen, Thomas, Weaver, Wieckowski

NOES: 0

ABSTAIN: 0

ABSENT: 1 – Manuel

RECUSE: 1 – Harrison: A separate vote was taken for Item 7, as Commissioner Harrison recused himself because of the proximity of this project to a family real estate interest.

PUBLIC COMMUNICATIONS

ORAL COMMUNICATIONS - None

PUBLIC HEARING ITEMS

Item 2. GEORGE EMMETT – 1238 Deer Road – (PLN2002-00204) – to consider a Tentative Tract Map 7250 and a Preliminary Grading Plan to subdivide a 1.23-acre site into five parcels and a finding to correct a graphic error regarding the general plan land use designation of a portion of the property in the Niles Planning Area. A Mitigated Negative Declaration has been prepared and circulated for this project.

Jim Toby, Project Civil Engineer, thanked staff for their hours of work on this project. He stated that a single-family, one-story home was currently on this property. The proposal would be to add a full cul-de-sac with a full emergency vehicle turnaround. A new storm drain system would be installed to channel runoff from the hill above and would be connected to the existing storm drain system on Canyon Heights Drive. Yearly water runoff problems experienced by the neighbors would be solved. He introduced James Martin, also representing the owner.

Jim Martin, local realtor, stated that he was there to answer questions.

Vice Chairperson Arneson opened the public hearing.

Tom Browne, Fremont resident since 1959 and adjoining property owner, stated that, during heavy rain, he had seen water "gushing out of gopher holes" on the property and he had seen the previous owners wielding shovels and buckets. Landslides had also occurred above the proposed development property. Approximately 120 feet of the rear of his property adjoined the proposed development and was below it, allowing water from that property to flow onto his property. He was not certain that the project would not increase the flow of water onto his property. He feared that water from the East Regional Parks property above the project would be diverted to the adjoining properties and that the storm drains might not be able to handle it. His views of the bay and beyond would be replaced by the fairly substantial wall of a two-story home and his privacy would be sacrificed for the sake of this development. He disagreed with the removal of one of the "spectacular" eucalyptus trees on the property.

Commissioner Cohen asked the size of his lot and his opinion of how this project might be inconsistent with his immediate area.

Browne stated that his lot was pie shaped and the back property line was 120 feet. There was a 15-foot drop from his property line in the back to his patio adjacent to his home and he worried about a year of heavy water flow.

Joan Aganon introduced her husband and stated that their property was next to the previous speaker's property, Tom Browne and their rear boundary also adjoined the applicant's property. She read a prepared statement that was distributed to the Commission. In it, she stated that they had been apprised by the applicant that up to ten feet of a portion of their rear property belonged to him. They had planted a palm tree (that was now 30 feet tall) on that portion of their property that the applicant was now claiming. She passed photos of the wildlife on the hill that they had watched for 16 years from their home and that would be blocked by the homes in the proposed project. She worried about fires and the water flow coming down through the applicant's property. She asked that, if the application was approved, single-story homes be built on Lots 4 and 5 rather than the proposed "two-story, concrete monster buildings" next to her house.

Commissioner Harrison asked if the location of her property line had come up during the escrow process when she bought her home 16 years ago.

Ms. Aganon stated that it had never come up.

Dave Gubera, 19-year neighbor, stated that most of the neighbors had owned their homes for approximately the same number of years. The fence on the property line between his property and the applicant's property had been built in 1945. He stated that he was considering subdividing his lot and had contacted the applicant to see if he was interested in buying it. The property line was never discussed. He stated that he had hired engineers to resurvey the boundaries of his property. He expressed concern about there not being any time limitations on the project and feared that it (and the noise) could go on indefinitely. He did not trust the applicant's integrity because of past experiences between the applicant and his parents. He believed that the reason the new road and cul-de-sac were planned was to facilitate movement by the trucks involved with the building of the project. He feared that disturbing the pesticide-contaminated soil would negatively affect the children in the neighborhood.

Commissioner Cohen asked how old his house was and the lot size.

Mr. Gubera stated that his house was built 1959 and he was not sure how large his lot was. He stated that he was not opposed to the applicant developing his property, but he needed to be consistent with the surrounding neighborhood and he should have communicated his plans to the neighbors during his two years of planning and design. He asked the Commission to take the time to look at his neighborhood, so that the Commission could understand their concerns.

Commissioner Weaver asked if the speaker would be agreeable to one-story homes being built on Lots 4 and 5.

Mr. Gubera stated that he would like to have two one-story homes at the end of his property, which would make four homes out of the five homes one story. He disagreed with the way the development had been handled. He believed the applicant would "throw up a bunch of big homes and leave." He stated that he planned to fight moving the fence 13 feet, which meant losing 13 feet along his rear property line.

Commissioner Weaver told Mr. Gubera that probably all of the Commissioners had driven up and looked at his neighborhood and the applicant's property.

Commissioner Cohen asked if the speaker's lot had any slope and what it was.

Mr. Gubera stated that the slope was "huge" but he did not know what it was. He stated that he had hauled in 40 yards of dirt to level out his front yard.

Lisa Ketchum stated that their house was the third of the houses on the court adjacent to the applicant's property. They bought their house next door to Mr. Browne three years ago. She stated that the street was very narrow with one entrance and exit. They were comfortable with their children playing in the streets and considered their home as their "piece of country in the city." The previous owner had built two retaining walls to "hold back the hill" because of the flooding and sliding above the property. She stated that she and her husband had had 50 yards of dirt removed to alleviate sliding. Many calls had been made to the City about the current drainage problems and she worried that they would become worse with this project. She stated that her lot was approximately 9,000 square feet and her home was approximately 1,200 square feet. The proposed homes would "stick out like a sore thumb," because the buildings were not designed to blend into the hill, as other homes on the hills did. Turnarounds and wide streets were irrelevant.

Commissioner Thomas asked what difference would it make to her children playing on the court if the street above was widened and a turnaround was added.

Ms. Ketchum stated that the neighborhood children played on all the surrounding streets and more traffic and people would make the now safe streets unsafe. The children would not be allowed to play on them as they always had.

Commissioner Cohen asked if she knew the square footage of the other houses in the court and of the homes on Deer Court.

Ms. Ketchum believed the other houses on her court had the same footage as her home. However, the houses on Deer Road were individual, farm-type homes and were as small as 900 square feet.

Mr. Toby replied to the neighbors concerns about storm drainage and flooding. The water would be put into a closed channel, which would alleviate the problems the neighbors had on Deer Court. The proposed storm drainage system would take into account the water flowing from the above hillside and large multiyear storms. Fire danger would be mitigated with a 30-foot wetband on the property, adjacent the hill.

Vice Chairperson Arneson asked why the owner had not met with the neighbors to answer their questions and concerns.

Mr. Toby had no knowledge of any meetings that the owner may have had.

Commissioner Wieckowski asked staff if an adverse possession analysis had been performed.

Vice Chairperson Arneson suggested he ask that question after the public hearing was closed and Commissioner Wieckowski agreed.

Commissioner Harrison asked if Mr. Martin could comment on the issue of the property lines that the previous speakers mentioned.

Mr. Martin stated that there was no reason for the owner to survey the property until he was required to present a tentative map, which was recently performed.

Commissioner Cohen asked what the square footage of the proposed houses would be.

Mr. Toby did not know what kind of houses would be built or how large they would be. He was before the Commission for approval of a tract map only.

Commissioner Harrison asked if one-story homes would be feasible in the area.

Mr. Toby stated that Lot 5 would be a narrow lot, because of the 30-foot wetband, and the house would need to be two stories.

Commissioner Thomas asked if the site could be redrawn to eliminate the problem with Lot 4 and create four lots instead.

Mr. Toby stated that the property would be adequate for five homes and he believed they would fit within the surrounding area. Each lot would be close to the minimum width that was allowed, given the hillside slope.

Commissioner Cohen asked if this could be made a P-District rather than a standard subdivision.

Mr. Toby stated that the owner preferred to not develop within a P-District because it had taken so many years to get to this point. A P-District would entail more time before the building actually began.

Vice Chairperson Arneson closed the public hearing.

Commissioner Wieckowski stated that Commissioner Cohen had informed him that an adverse possession analysis was performed by the private landowners, rather than the City.

Senior City Attorney Daniel stated that would have been her answer.

Vice Chairperson Arneson asked if staff could explain the issues concerning the drainage, which seemed to disturb all the speakers.

Associate Civil Engineer Russell replied that as runoff came off the hill through the applicant's property, part of it was directed to the existing street and some water ran into the adjacent lots. The developer was required to comply with the Alameda County Flood Control and Water Conservation District Standards. He had provided hydraulic calculations that showed the design could accommodate the run off from the hillside which would go into a valley gutter along the boundary of Lot 5 and enter an underground system. If there was a problem, the water would move across the driveway on Lot 5 and enter into Deer Road. All inlets would be designed to handle the run off.

Vice Chairperson Arneson asked if this part of the development was a positive for the neighbors who spoke this evening or would it be worsened. She also asked if any housing would be built on slopes over 30 percent and did the Commission need to be concerned about the lawsuits with respect to the fence lines?

Associate Civil Engineer Russell replied that the Ketchum property had a storm drain easement and would not reap the benefits of the new storm drain system, as would the Brownes and the Aganons. No neighbor's situation would be worsened and no houses would be built on 30-degree slopes. The toe of the slope was at 20 percent.

Senior City Attorney Daniel stated that the fence lines were a private matter between the parties. The proposed conditions were intended to accommodate whatever outcome was reached.

Commissioner Thomas worried about the drainage further down the hill in Canyon Heights or lower. Would the underground system accommodate the runoff that now flowed aboveground across the properties?

Associate Civil Engineer Russell stated that she was correct the new storm drain would funnel the water underground all the way to Alameda Creek, which was in the Alameda Flood Control jurisdiction and they would review the plans prior to final map approval.

Commissioner Thomas asked if the trees could be conditioned to be moved to stay with the original owners' properties, depending upon the outcome of the boundary dispute.

Senior Planner Schwob stated that the property owners should work that out along with the issue of the property lines. Staff believed that two trees should be preserved, the palm tree and one of the two eucalyptus trees.

Commissioner Thomas recommended that the adjacent property owners include the location of the trees during their negotiations with the applicant.

Commissioner Harrison asked if there was some kind of monitoring system to safeguard that a blockage down line was removed so that there would not be any flooding. Would the 30-foot wetband improve fire prevention in the area?

Associate Civil Engineer Russell stated that staff reports always included a statement concerning this potential. The City was required to clean inlets and storm drains, because it would be a public facility. The City required that any project adjacent to an open space incorporate a wetband to provide a firebreak. A fire hydrant would also be installed at the end of the cul-de-sac as part of the street improvements.

Commissioner Weaver asked if the 48-foot tall eucalyptus tree at the top of the court was to be preserved, but the 50-foot eucalyptus would be eliminated.

Associate Civil Engineer Russell stated that she was correct. The 50-inch diameter tree could not be located within a planter strip, so it would be removed.

Commissioner Weaver asked why the street could not be moved to accommodate the tree.

Associate Civil Engineer Russell stated that moving the street would affect the frontage setback requirements of the proposed homes.

Commissioner Weaver asked if the tree could be accommodated if there were only four lots.

Associate Civil Engineer Russell agreed that it probably could.

Commissioner Wieckowski asked if the City would allow actually a 50-inch tree to be taken down because it would infringe on the median "under Fremont's median law?" Why not build a median around this tree? Many cities throughout the country have "bent their streets" to preserve a tree.

Associate Planner Meerjans stated that Eucalyptus trees in the hill area were fire hazards. The tree to be removed was a standard Eucalyptus. The other tree was a relatively rare Red Gum Eucalyptus.

Associate Civil Engineer Russell stated that if the City Landscape Architect had designated the tree as worth saving, the street would have been adjusted.

Commissioner Cohen asked for a clarification concerning the surrounding zoning densities. He asked if Filton Court had the same zoning designation as the applicant's property.

Associate Planner Meerjans stated that it did.

Associate Civil Engineer Russell stated that the lots on Filton Court were larger than the lots on Deer Road.

Commissioner Cohen asked if the homes on those lots were very small.

Associate Planner Meerjans replied that he was correct.

Commissioner Cohen stated that he would not support the application, because it was not consistent with the General Plan and was wholly inconsistent with the surrounding area. This would be a subdivision that could normally be found in the flatlands. This development should be a P-District where there was more control with the site and it would have to be consistent with the countrified surroundings. If it were up to him, none of the development would have occurred in the hills.

Commissioner Harrison suggested that the owner, Mr. Emmett, meet with the neighbors and staff to develop a better plan. The neighbors understood that he had a right to develop his property and something would be built there.

Vice Chairperson Arneson asked Commissioner Harrison if he was recommending a P-District approach.

Commissioner Harrison stated that he would let Commissioner Cohen be the expert on P-Districts since he had written articles on them.

Commissioner Weaver would not support this project. In her opinion, it was too much building for the area. She would have supported it if it had been four single-story homes. The neighbors would obtain certain improvements that would enhance their properties, but the disadvantages outweighed the advantages.

Commissioner Thomas would not support the project. She reminded the public that the views from their homes were going to change in some way; something would go in there. She recommended that the owner meet with the surrounding residents. The Commission would not stand in the way of something "nice" for the property but she did not consider this plan "nice."

Commissioner Wieckowski agreed with the other Commissioners and stated that he would not support the project. He wanted to see more simple homes and something more creative done with this property.

Vice Chairperson Arneson asked if the Commission wanted to continue or deny this project.

Commissioner Thomas stated that a continuance would have to be to an uncertain date to allow enough time to redesign the project. A denial seemed more appropriate.

Senior City Attorney Daniel asked for findings for the denial.

Commissioner Thomas deferred to Commissioner Cohen for the reasons for denial.

Commissioner Cohen asked if the maker of the motion wanted to adopt his reasons for denial as findings.

Commissioner Thomas agreed that his reasons for denial were appropriate as findings for denial.

Commissioner Harrison asked if the motion should include recommendations that the owner meet with the neighbors and staff.

Senior City Attorney Daniel stated that his suggestion was not an appropriate part of the motion, but she assumed that the applicant had heard his comments.

Vice Chairperson Arneson supported the concept of a Planned District, as suggested by Commissioner Cohen.

Commissioner Cohen stated, for the record, that the Commission was not opposed to developing the site. It was just the way it was proposed. The Commission would support a development that was done through a P-District. He agreed that there should be more interaction with the neighbors.

Commissioner Thomas commented that many people lived, or had lived, in "very small homes" of 1,200 square feet. The Commission was tired of looking at big houses and it needed to see more reasonably sized houses, as well as affordable units.

IT WAS MOVED (THOMAS/WEAVER) AND CARRIED BY THE FOLLOWING VOTE (6-0-0-1) THAT THE PLANNING COMMISSION DENY APPROVAL OF TENTATIVE TRACT MAP 7250 AND PRELIMINARY GRADING.

Senior Planner Schwob stated that this decision could be appealed by filing an appeal within ten working days with the City Clerk.

Item 3. PERALTA DREAM – FCSN – 2300 Peralta Boulevard – (PLN2003-00002) – to consider a rezoning from C-O, Administrative Office District, to P-2003-2, Planned District, for a 1.34-acre vacant site located in the Centerville Planning Area. The project includes a "Friends of Children with Special Needs (FCSN) Center" and ten (10) four bedroom, two bath residential apartments for both residents with special needs and their caregivers. A Mitigated Negative Declaration was previously prepared and adopted for this project.

Rick Williams, architect, explained that FCSN was made up of parents of predominately autistic children who had been envisioning a place where their adult children could live independently. Holland Avenue was at the rear at the site and a small pedestrian walkway would connect to Edwards Avenue. The 6,000 square foot community center would be made up of classrooms, rooms for special therapy and a resource center for the greater community. Ten four-bedroom apartments with shared eating facilities and a large living room would be built. Parking met the City's requirements, although the residential parking, as planned, probably would not be needed, as the residents would not be driving. Meetings had been held with the surrounding neighbors. The courtyard was located within the building cluster to buffer outdoor noise and provide privacy for the adjacent neighbors whose homes were built on zero lot lines. Windows overlooking the adjoining properties were at a five-foot height and only the tallest person could see out. Originally, moderate-sized canopy trees were planned for screening between the properties, but any tree acceptable to the City and the neighbors would be planted. He asked for flexibility concerning the metal roof condition to allow for some other kind of high quality, but less expensive roofing material if funding became unavailable. He expressed appreciation for staff's flexibility concerning the outdoor furnishings.

Vice Chairperson Arneson understood that the offsite and onsite amenity fees were to be used to pay for the metal roof, which should almost completely offset the cost.

Mr. Williams stated that she was correct. However, he did not believe those fees would completely offset the cost, which he believed would be between \$60,000 and \$80,000. After receiving contracting bids, they would have a better idea of the cost.

Commissioner Harrison asked if the roof could actually cost \$60 to \$80 thousand dollars.

Mr. Williams stated that it could. If he believed that it would be less, he would not have brought it up as an issue.

Commissioner Wieckowski asked if the 20 residential parking spaces were not necessary, would it be possible to add two more units in, for example, eight of the spaces.

Mr. Williams replied that the caretakers and the families of the future residents would need the parking spaces, rather than the residents, and they would probably be used more during the day. He believed that, occasionally, all of the planned spaces would be in use. Normally, residential parking was used most in the evening and overnight when everyone was at home.

Vice Chairperson Arneson opened the public hearing.

Bill Spicer, Edwards Avenue resident, stated that he was also speaking for another neighbor. They lived on each side of the pedestrian walk. They supported the project but not as presented, because the buildings would be only 15 to 18 feet from the lot lines. With their zero lot line homes, a two-story building would be too close. He asked for a setback of at least 20 feet for privacy. The trees would create a high wall effect and he and his neighbor preferred it to be more open. He asked what was planned for the pedestrian strip that was used as an unofficial walkway. He wondered why a traffic study for Peralta Boulevard was not performed, as it was impossible to exit from Edwards Avenue during the commute times.

Mr. Williams stated that the intent was to provide trees to screen for visual privacy. However, he would be happy to work with the neighbors and City landscape architect. The roof heights on the neighbors' side were as low as possible and the buildings had been pushed back from the property lines as much as possible. The community center and the residents' homes would not be a destination during commuter hours. Therefore, the project would not contribute to the current traffic flow at those times. A fenced pedestrian connection would be constructed to allow the residents to walk to Holland Avenue and the closest bus stop.

Vice Chairperson Arneson asked if Residential Building No. 1 had been moved 18 feet from the property line.

Mr. Williams replied that part of the building was 15 feet away from the property line. The adjoining neighbor's home was almost against the masonry wall. However, no windows were on that wall of the neighbor's home. The building was 18 feet from the portion of the property line that adjoined the neighbor's yard. Solar orientation was such that the building would not create any additional shade for the adjoining neighbor's yard.

Commissioner Thomas asked if the pedestrian way that the last speaker mentioned crossed the project's property.

Mr. Williams replied that the pedestrian way he was speaking of was from Edwards Avenue to the project's court and was owned by the City. He stated that Senior Civil Engineer Moughon could probably answer her question better than he could.

Vice Chairperson Arneson closed the public hearing.

Senior Civil Engineer Moughon stated that the pedestrian way on Edwards Avenue was owned by the City and had been intended to connect to a future cul-de-sac on Holland

Avenue as a public pathway. However, the development did not happen and there was no public access. The City would like to abandon the pathway that deadened at a fence. A storm drain was created to drain the proposed cul-de-sac, but the site was regraded to Peralta Boulevard. He recommended abandonment of both.

Vice Chairperson Arneson asked if the two neighbors could purchase the easements from the City.

Senior Civil Engineer Moughon stated that if they were abandoned, a street abandonment application would be presented to the City Council, and the City could discuss it with the owners of the neighboring properties.

Vice Chairperson Arneson asked why no traffic study was recommended.

Senior Civil Engineer Moughon replied that there would not be enough traffic generated by this project to require a traffic study.

Commissioner Weaver liked the project and asked the applicant to work with the neighbors concerning the trees. She congratulated the architect on the very nice project.

Commissioner Harrison agreed with Commissioner Weaver and encouraged the applicant to confer with the neighbors regarding the landscaping. He announced that the FCSN was having a fundraiser on October 25th and encouraged anyone interested to call 1-510-445-1242.

Senior Planner Schwob stated that the conditions of approval would include the Commission's recommendation concerning the placement, type and shape of the trees to ensure the best privacy, open space and lighting.

Commissioner Harrison added that he felt staff and the applicant could decide upon the roof material.

Vice Chairperson Arneson stated that all of the other Commissioner's heads were nodding in agreement.

IT WAS MOVED (HARRISON/WEAVER) AND CARRIED BY THE FOLLOWING VOTE (6-0-0-1) THAT THE PLANNING COMMISSION HOLD PUBLIC HEARING;

AND

ADD CONDITION THAT TREES PLANTED ALONG ADJOINING PROPERTIES OFF OF EDWARDS AVENUE ADDRESS THE NEIGHBOR'S CONCERN'S, SUBJECT TO STAFF REVIEW APPROVAL.

AND

RECOMMEND THE CITY COUNCIL FIND THE PROJECT IS WITHIN THE SCOPE OF THE PREVIOUSLY ADOPTED MITIGATED NEGATIVE DECLARATION AND THAT NO FURTHER ENVIRONMENTAL REVIEW IS REQUIRED;

AND

FIND PLN2003-00002 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS, AND POLICIES SET FORTH IN THE GENERAL PLAN'S HOUSING AND LAND USE CHAPTERS AS ENUMERATED WITHIN THE STAFF REPORT;

AND

FIND PLN2003-00002, AS PER EXHIBIT "B" (SITE PLAN, FLOOR PLANS, ELEVATIONS, AND LANDSCAPE PLANS), FULFILLS THE APPLICABLE REQUIREMENTS SET FORTH IN THE FREMONT MUNICIPAL CODE;

AND
RECOMMEND THE CITY COUNCIL AUTHORIZE THE USE OF APPLICABLE AMENITY FEES 100% ON-SITE FOR THE CONSTRUCTION OF THE STANDING SEAM METAL ROOF;

AND
AMEND CONDITION B-5 TO ALLOW STAFF TO WORK WITH THE APPLICANT IN THE CHOICE OF AN ALTERNATIVE ROOFING MATERIAL FOR THE FCSN CENTER SHOULD THE DESIRED STANDING SEAM METAL ROOF PROVE TOO COSTLY;

AND
RECOMMEND PLN2003-00002 TO THE CITY COUNCIL IN CONFORMANCE WITH EXHIBIT "A" (REZONING EXHIBIT).

The motion carried by the following vote:

AYES: 6 – Arneson, Cohen, Harrison, Thomas, Weaver, Wieckowski
NOES: 0
ABSTAIN: 0
ABSENT: 1 – Manuel
RECUSE: 0

- Item 4. TREE OF LIFE CHURCH – 4100 Peralta Boulevard – (PLN2003-00005)** – to consider a rezoning from C-C(CSPC), Community Commercial (Centerville Specific Plan Overlay), to P-2003-5(CSPC), Planned District (Centerville Specific Plan Overlay), and a Planned District Minor Amendment for a 300-seat religious facility and educational facility within an existing building located in the Centerville Planning Area. This project is categorically exempt from CEQA review under Section 15301, Existing Facilities.

MODIFICATION TO STAFF REPORT:

~~**Redevelopment:** This project is within the Centerville Redevelopment Area. Although not directly implementing the area redevelopment plan by bringing in more commercial uses, Redevelopment staff has indicated that the project would not have negative impacts on the future implementation of this goal.~~

This project is within the Centerville Redevelopment Area on Peralta Boulevard, one of the community's significant commercial corridors and an area immediately adjacent to Centerville's historic commercial core. The relevant goals of the Redevelopment Plan include enhancing the commercial districts in Centerville (Centerville Redevelopment Plan Part IV, Goal 8); helping to concentrate retail activities in the historic business district of Centerville (Goal 9); and attracting new businesses and retaining and expanding existing businesses in the area (Goal 21).

Commissioner Harrison recused himself because of the proximity to family-leased property.

James Gee, pastor, stated that the church had been meeting in many locations around the City since its inception four years ago. Serving the community was a top priority for the church members, and he outlined community events that his church had been involved with, such as, providing free groceries and health checkups along with other churches and sending a prayer team to Ground Zero after 9/11 to join others who prayed for healing, comfort and restoration. This property used to house a pool hall and video arcade. He stated that he had received many letters and petitions that supported the church's move to this location. He asked the members of the public who supported the church at this location to stand up. He gave reasons for approving the application as follows:

- Central location for church members

- Good location to serve community for possible ESL classes
- Surrounding small businesses would be positively impacted
- Nearby traffic artery would minimize traffic impacts
- Strong neighborhood support

Vice Chairperson Arneson asked if the church was planning to buy the whole property and if the other two users would continue with their businesses.

Pastor Gee confirmed that the whole property would be bought, but only the "Great Entertainer" building would be used, at this time, for church services. The two businesses would stay.

Vice Chairperson Arneson opened the public hearing.

Jessie Dong, computer engineer, stated that he loved the City of Fremont. While unemployed, he observed the emotional problems that others had who were out of work. The church helped people who were in trouble and it would support everyone in the community. He asked that the application be approved.

Ann Hong Zhon, 10-year resident, stated that the church had supported her and her son when she became a divorced homemaker. As a result of their support, she became a happy and healthy member of society who became the Supervisor of Member Services and Outreach for Tri-City Health Center. She also asked for approval of the application.

Linmen Chen, retired social worker, stated that since her retirement she was a full-time volunteer at the church. The church would provide for the psychological, emotional and spiritual needs of the cross-cultural community. She asked for support for the project not only as a church member, but also from her perspective as a social worker.

Sherman Williams stated that he was the pastor of the Fremont Community Church and Christian Community Schools on Mission Boulevard and he represented the Fremont Tri-Cities Association of Evangelicals. He was thrilled with the multi ethnicity development occurring in the City. More ethnic churches were needed in the Community to minister to the each part of the community and to the community at large. He applauded Pastor Gee for his ability to bring people together and urged approval of the application.

Pastor Gee closed by stating that he came to the United States when he was 12 years old and he believed that the Chinese community "was a silent bunch unless you're changing their school zoning, then they come out." It was time for the Chinese community to start participating in and becoming a contributing factor in the larger City of Fremont community.

Vice Chairperson Arneson closed the public hearing.

IT WAS MOVED (WEAVER/COHEN) AND CARRIED BY THE FOLLOWING VOTE (5-0-0-1) THAT THE PLANNING COMMISSION HOLD PUBLIC HEARING;

AND

RECOMMEND THE CITY COUNCIL FIND THE PROJECT IS EXEMPT FROM CEQA REVIEW PER SECTION 15301; EXISTING FACILITIES;

AND

FIND PLN2003-00005 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE CHAPTER AS ENUMERATED WITHIN THE STAFF REPORT;

AND
FIND PLN2003-00005, AS PER EXHIBIT "B" (SITE PLAN AND FLOOR PLANS),
FULFILLS THE APPLICABLE REQUIREMENTS SET FORTH IN THE FREMONT
MUNICIPAL CODE;

AND
RECOMMEND TO THE CITY COUNCIL APPROVAL OF THE PLANNED DISTRICT AS
SHOWN ON THE PRELIMINARY AND PRECISE SITE PLAN FOR PLN2003-00005 AS
SHOWN ON EXHIBIT "A" (REZONING) AND EXHIBIT "B" (SITE PLAN AND FLOOR
PLANS) BE APPROVED, BASED ON FINDINGS AND SUBJECT TO CONDITIONS OF
APPROVAL AS SET FORTH IN EXHIBIT "C";

AND
AUTHORIZE STAFF TO ISSUE THE PLANNED DISTRICT MINOR AMENDMENT TO P-
2003-5 ALLOWING THE CHURCH USE, SUBJECT TO THE CONDITIONS SET FORTH IN
EXHIBIT "D", INCLUDING THE REQUIREMENTS SET FORTH IN THE PLANNED
DISTRICT ZONING, P-2003-5.

The motion carried by the following vote:

AYES: 5 – Arneson, Cohen, Thomas, Weaver, Wieckowski

NOES: 0

ABSTAIN: 0

ABSENT: 1 – Manuel

Vice Chairperson Arneson announced that Item 7 had been passed on consent earlier in the evening.

Item 8. INCLUSIONARY HOUSING ORDINANCE – City Wide – (PLN2003-00088) – to consider a Zoning Text Amendment (ZTA) to require new residential developments of seven units or greater to include an affordable housing component. This Ordinance would implement Policy 3C of the Housing Element and would apply throughout the City of Fremont. A Negative Declaration has been prepared and circulated for this project.

MODIFICATION TO THE ORDINANCE:

Page 5, Section 5, line 5: No ~~temporary or permanent certificate of occupancy~~ final inspection for occupancy and
Page 10, Section 8 (d) (4), line 1: No ~~temporary or permanent certificate of occupancy~~ final inspection for occupancy

Senior Planner Schwob noted minor corrections to the ordinance and introduced Senior Planner Kathleen Livermore, Deputy Redevelopment Agency Director for Housing Laura Gonzalez-Escoto and Consulting Attorney Rick Judd.

Ms. Gonzalez-Escoto recalled the components discussed at a prior study session that included the following:

- Fifteen percent of developments of seven or more units to be reserved for affordable housing at 110 percent of area median income.
- Fifteen percent of rental developments to be reserved for low or very low income.
- Alternatives for developers could be off-site construction or land dedication.
- Development that might be incompatible with the inclusionary ordinance could include development within low-density sites or adjacent to open space designations. A fee would be charged that would be large enough to ensure that affordable units could be built off-site.

- Pending developments would be grandfathered.
- Incentives were recommended, such as duet units on corners of single-family developments.
- Fees would be used towards affordable housing.
- Rentals would stay affordable for 55 years.
- Owner occupied units would stay affordable for a minimum of 30 years and would be renewed at the time of each sale to a new owner.
- Annual inspection would be performed.
- The City would make certain that renters and buyers would be ready to occupy the affordable units when they were ready.

Commissioner Harrison asked if the 30-year rental term, mentioned in Exhibit A, page 7, applied to both renters and owners.

Ms. Gonzalez-Escoto replied that when a buyer entered a program, he signed an agreement that allowed the City or another low-income buyer to buy the property when he was ready to sell. In which case, a new 30-year regulatory agreement would be issued on that particular unit.

Commissioner Wieckowski asked if the grandfather clause would apply to development that really had not “gone anywhere” such as the General Plan Amendment (GPA) application for Ardenwood and asked where in the development process would a developer have to be to be grandfathered in. He asked what kind of projects and how many lots would be affected by the grandfather clause.

Ms. Gonzalez-Escoto turned to the definition on page 3, Pending Project, which stated that if a tentative development or other development application had been filed with the City (and deemed complete by the City), no later than the date on which the ordinance became effective would be grandfathered in.

Senior Planner Schwob stated that there were a number of projects in the pipeline that would be grandfathered, for example the Bellcere GPA had not gone the next step. The definition of a pending project needed to be clear as to whether it did or did not include General Plan Amendments.

Senior City Attorney Daniel stated that the Commission could make that recommendation, if it chose to do so.

Commissioner Wieckowski asked that if all developments that were less than seven units and Ardenwood were excluded, what else was left to develop in the City?

Ms. Gonzalez-Escoto asked if he was recommending that General Plan amendments be excluded.

Commissioner Wieckowski stated that he was.

Attorney Judd added that applications that were deemed complete within 60 days after final Council action would be grandfathered, which would be at a minimum in January.

Vice Chairperson Arneson asked if someone could “beat the clock” if they hurried.

Attorney Judd replied that perhaps that could happen, but the application had to be deemed complete no later than 30 days after the effective date of this ordinance.

Senior Planner Livermore clarified that the intention of the grandfather clause was to allow developers to continue on with what they had planned. Developers had been made aware that at least a ten-percent inclusion for affordable housing was expected at this time. The PRP process was excluded, which was a very preliminary stage. The development community was comfortable with this approach.

Commissioner Weaver asked if there was some requirement that the ordinance not take place until 60 days after City Council action or could it be implemented sooner.

Attorney Judd stated that, if nothing else was done, it would take effect 30 days after Council action, which was standard state law.

Senior City Attorney Daniel replied that under state law, it would become effective 30 days after City Council approval. The additional 30 days was added to support Senior Planner Livermore's statement. An urgency ordinance could be adopted that allowed less than 30 days for it to take effect, but she was skeptical that it could be implemented.

Vice Chairperson Arneson noted that the in-lieu fee to very low density residential was a quarter of a house to one house per acre. She noted that the recent O'Brien project up on Mission had lots less than one-half acre and the houses were \$1.5 million dollars and up. She wondered how the inclusionary ordinance would work in that instance. She wondered if price should be used as a benchmark.

Ms. Gonzalez-Escoto stated that the language was reaching for exactly that kind of development. The in-lieu fee would allow more affordable units to be constructed somewhere else.

Senior Planner Schwob stated that the O'Brien project included several smaller lots near the commercial site that may have met the requirement.

Vice Chairperson Arneson stated that they were still expensive. An affordable unit among many expensive homes was still not affordable. Perhaps a dollar value should be used. It was on page 9 D of the draft ordinance.

Ms. Gonzalez-Escoto stated that they had been struggling where that delineation point should be; house size, square footage was considered, then General Plan designations were looked at. She suggested that the type of project Vice Chairperson Arneson mentioned could be included.

Vice Chairperson Arneson suggested low density (a certain number of units) or very low density and a price range.

Senior Planner Schwob understood the interest. However, low-density projects ranged from the flatlands to the base of the hills and it was difficult to know what the asking price would be.

Vice Chairperson Arneson opened the public hearing.

Alexandra Starr, President, League of Women Voters, read a prepared statement in which she stated that the inclusionary ordinance was very important to provide housing that people working in Fremont could afford. It was not in the community's best interest to become an "economically exclusive community" but it should be an inclusive community that included all the people who helped to make Fremont the vibrant, diverse community that it already was. This was only a first step. A commercial linkage fee and the establishment of a housing trust fund was strongly recommended. The identification of specific properties in the commercial industrial areas that might be rezoned and used for affordable housing was also

recommended. The City's web site should provide housing updates concerning how the City was progressing with efforts to provide and encourage affordable housing whenever new information became available.

Commissioner Wieckowski asked her to comment on the seven-unit minimum lot development.

Ms. Starr stated that her organization did not have an official policy, at this time.

Tom Perez stated that he was the spokesperson for Affordable Housing Advocates and read a prepared statement. He believed that a model for affordable housing was Oroysom Village at 159 Washington. An "A" for effort was given to the Inclusionary Housing Ordinance, but an "F" was given for result. He listed their concerns:

- 15 percent was too low, should be 20 percent
- The ordinance should target low and very low income families, instead of moderate income households
- Low and very low income families generally overpaid for housing
- Elimination of two-tiered requirement
- Affordable units must be produced along with market rate development to ensure that affordable units were actually created
- Affordable units should be dispersed throughout the community
- In lieu fees should be used to produce units at same income categories for which fees were paid
- Incentives were very good
- Monitoring and enforcement was necessary to ensure that rental and ownership units remained affordable to the income population for which they were created.

Miriam Keller stated that she was a member of CORE (Congregations Organized for Renewal), which included 14 churches representing 25,000 people in southern Alameda County. This ordinance was only one step in the right direction. It should require at least 20 percent affordable units. The 55 years should be changed to 99 years or in perpetuity. Density bonuses larger than the State density bonus should be offered by the City. The in lieu section was much too vague and unclear.

Vice Chairperson Arneson closed the public hearing.

Commissioner Wieckowski agreed with the speakers' comments and believed that the high priced housing in the City had become a disservice to ordinary people, like a single mom or a firefighter. He expressed little sympathy for the developers who had been building high-end houses in the City for the past 20 years. If the smallest parcels were excluded from the ordinance, only big, monster homes would be built and few affordable homes would be created. If all the future 5,000 homes that were expected to be built in the City were just low and very low income affordable homes, the goal for the housing element would only be met for the next five years. The long term must be considered. He understood that if an affordable housing percentage was created too high, many developers could decide not to build within the City. If that happened, he foresaw nonprofit agencies and affordable housing developers coming in to fill the void with truly affordable homes for low and very low-income families. He believed that the City's open space requirement should be changed to accommodate changes in population.

Vice Chairperson Arneson asked if Commissioner Wieckowski's concerns could be better addressed in the zoning ordinance and the General Plan.

Senior Planner Schwob stated that two new staff members had been hired to implement housing programs related to removal of housing constraints, such as open space, parking, and zoning. All those concerns would be addressed in subsequent programs and amendments.

Commissioner Wieckowski stated that he wanted the issues to be considered holistically or globally and he understood that they could not be addressed tonight by the Commission.

Vice Chairperson Arneson complimented staff on the research and the completeness of the report. One step at a time should work. Later, after some experience, it could be changed to make it better. She believed that the in lieu fees would almost force development to go in the affordable housing direction. It seemed that most of the local cities were still working at it and had a long way to go. The in lieu fee of \$31 thousand per unit was much higher than any of the other cities' fees.

Commissioner Thomas asked if many of the affordable apartments agreements had expired and why not go to 99 years or in perpetuity, like Hong Kong.

Ms. Gonzalez-Escoto stated that the Commission could include the 99-year recommendation. All affordable housing within the State used the 55-year length of affordability, which was the minimum threshold.

Vice Chairperson Arneson suggested that the Commission make a recommendation to the City Council.

Commissioner Thomas stated that she would like to see 99 years as a recommendation.

Vice Chairperson Arneson noted that the other Commission members were nodding their heads in agreement.

Commissioner Harrison asked if the in-lieu fee would be passed onto the consumer and, if so, he expected that it would affect the cost of the other houses. He asked if that effect had been studied and reported upon.

Ms. Gonzalez-Escoto replied that a body of real estate knowledge acknowledged that whenever a community instituted something like an inclusionary housing ordinance, the entire residential market made an adjustment in land value, some thought it could be cataclysmic. Another body believed that someone would have to pay for it.

Commissioner Harrison noted that a study by the developers showed that the 15 percent inclusionary program with a median price of \$441,000 would increase the cost of a unit by \$42,000. He questioned if this was the best way to solve the affordable housing problem. He agreed that a commercial linkage fee was fair, rather than only looking at the housing developers.

Ms. Gonzalez-Escoto stated that in the bigger picture, this inclusionary ordinance was not the only tool to accomplish affordable housing. The next product would be the commercial linkage fee. The 20 percent affordable housing fund was available to support the nonprofit builders, who, as Commissioner Cohen stated, "Do it best, do it well." Zoning and density would be reviewed with future affordable housing in mind.

Commissioner Harrison wondered if a sledgehammer was being used at this time when a screwdriver and a regular hammer could solve the problem.

Attorney Judd stated that he was the only survivor in the room of the City's last effort to go forward with inclusionary housing approximately seven years ago. In his opinion, trying to

make anything perfect was “always the enemy of the possible or the good or the useful.” He wondered what an imperfect inclusionary program might have produced between 1996 and now.

Ms. Gonzalez-Escoto stated that she had received three telephone calls from builders today where she was told, “this was the best that they’ve seen.” This was the best effort at this time.

Commissioner Weaver was generally pleased with the ordinance and agreed that it was a start. She agreed that 20 percent might have been better. However, she recognized that this was a baby step to get to where the City needed to be to provide housing for the many people who worked in the City. She would support it.

Commissioner Wieckowski opined that a presumption was being made that the market rate development would spur the low and very low-income housing. He asked if Proposition 46 passed, what would the possibilities be for developing affordable units for the community? He would like to see 30 percent inclusionary housing and asked what other kinds of “sticks” (rather than sledge hammers) could be used with developers. If 30 percent were ordered, did Ms. Gonzalez-Escoto think no development would occur or would there be only nonprofit?

Ms. Gonzalez-Escoto agreed that Proposition 46 would be another tool, which included some money to match existing housing trust funds. Perhaps the in lieu fee could form the corpus for such a fund. Later in the year, she expected that an affordable housing development would be brought before the Commission by an affordable housing developer. Developers were pushing for 10 percent and housing advocates were pushing for 20 percent. She would leave the decision up to the Commission.

Commissioner Cohen shared Commissioner Wieckowski’s frustration. In his opinion, this ordinance was too little, too late and was just for show. However, he would support the ordinance, although it was only symbolic and would provide only token affordable housing. He believed that the landowner and the developer would still make a lot of money, even with the additional fees. He believed the best approach was to create a larger pool of trust funds to support the nonprofit and affordable housing developers. He believed that the usual developer did not want to add affordable housing to his development and would not do it, except, perhaps in the rental area. Therefore, the trust funds that the developer would contribute would eventually do some good. Incentives, Section 4b, page 5, allowed residential attached homes within a single-family home development. He did not believe it worked in any housing development and would certainly not work when trying to incorporate affordable housing into a development. Anyone who did not have a vested right in a development should not be grandfathered.

Vice Chairperson Arneson asked if he wanted to say, “Anyone not vested was subject to the new ordinance.”

Commissioner Cohen stated that he did.

Commissioner Harrison asked what vested meant in this context.

Senior City Attorney Daniel replied that a vested right would come after an entitlement had been granted or after the building investment and a building permit had been granted.

After some discussion between Commissioner Cohen and Senior Deputy City Attorney Daniel, Senior City Attorney Daniel stated that, for example, a legislated, planned district ordinance did not necessarily equate with a vested right.

Attorney Judd agreed with Senior City Attorney Daniel that rights vested sometime after the building permit was granted. The usual rule of thumb was that there had to be some physical change on the site for the rights to legally vest. He suggested that Planning staff work on the kind of approval that would be a logical trigger

Commissioner Harrison asked who granted the waiver for the grandfather clause.

Attorney Judd stated that he had been waiting for this question to come up. The waiver request had to be brought up during the first City approval process for the project or during any appeal and would be part of the land use approval process.

Commissioner Thomas asked if it was the Commission's will to change 55 years to 99 years and the 30-year renewal to a longer time.

Senior City Attorney Daniel clarified that 30 years was for ownership and 55 years was for rental properties.

Attorney Judd stated that for ownership units this was a renewing restriction and any sale prior to 30 years would trigger a renewal.

Commissioner Thomas asked if the Commission agreed to leaving the individual owner/housing units to 30 years and changing the rental units to 99 years.

Vice Chairperson Arneson asked if the Commission agreed to striking 4B and adding the point of legislative approval.

Commissioner Wieckowski asked for comment on 4B.

Ms. Gonzalez-Escoto replied that an acceptable example for 4B might read, "A single family lot development that would allow duet units on corner with front doors facing different streets." A project that would be seen later in the year consisted of single-family homes and ramped up to multifamily attached townhomes in one development.

Commissioner Thomas suggested that it should read single-family projects that "may" contain multifamily homes. It would be perfectly appropriate to designate some of the townhomes as affordable.

Commissioner Cohen stated he would like to see that provision excluded, because if someone wanted to build attached units within a single-family development, it would be done under a P-District and would be allowed under normal circumstances. However, he agreed to "go with the flow."

Commissioner Harrison stated that since Commissioner Cohen planned to vote symbolically to support the ordinance, he would vote symbolically to not support it. He complemented staff for the hard work they did, but he feared that it would negatively impact development and future home prices.

Vice Chairperson Arneson stated that she would support the ordinance. She suggested wording for the in lieu provisions to allow payment of fees for lots in excess of one-quarter acre or one-third acre," if one-quarter acre was too small.

After some discussion, it was decided that if all lots were 10,000 square feet or larger they would be eligible to pay the in lieu fee.

Commissioner Cohen stated he wanted to make it clear that he was not casting aspersions on the efforts of Ms. Gonzalez-Escoto. He saw her as a kindred spirit in her belief in affordable housing. He hoped that further efforts by her might prove his skepticism wrong.

Commissioner Harrison echoed Commissioner Cohen comments.

Commissioner Wieckowski also agreed and complimented Ms. Gonzalez-Escoto on her nice job, as did Vice Chairperson Arneson.

IT WAS MOVED (WEAVER/THOMAS) AND CARRIED BY THE FOLLOWING VOTE (5-1-0-1) THAT THE PLANNING COMMISSION HOLD A PUBLIC HEARING;

AND

RECOMMEND TO THE CITY COUNCIL THAT THE INITIAL STUDY CONDUCTED FOR PLN 2003-00088 HAS EVALUATED THE POTENTIAL IMPACTS OF THE INCLUSIONARY HOUSING ORDINANCE THAT COULD CAUSE AN ADVERSE EFFECT, EITHER INDIVIDUALLY OR CUMULATIVELY, ON WILDLIFE RESOURCES AND FIND THAT THERE IS NO EVIDENCE THE PROJECT WOULD HAVE ANY POTENTIAL FOR ADVERSE EFFECT ON WILDLIFE RESOURCES;

AND

RECOMMEND TO THE CITY COUNCIL ADOPTION OF DRAFT NEGATIVE DECLARATION PLN2003-00088, FINDING THAT IT REFLECTS THE INDEPENDENT JUDGEMENT OF THE CITY OF FREMONT, AND FINDING THERE IS NO SUBSTANTIAL EVIDENCE THAT THE PROJECT WILL HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT;

AND

RECOMMEND THAT THE CITY COUNCIL FIND THAT THE PROPOSED INCLUSIONARY HOUSING ORDINANCE (PLN2003-00088) IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S GENERAL PLAN. THE PROPOSED INCLUSIONARY HOUSING ORDINANCE IMPLEMENTS THE RECENTLY ADOPTED HOUSING ELEMENT, POLICY 3C, IMPLEMENTATION PROGRAM NUMBER 20;

AND

RECOMMEND THAT THE CITY COUNCIL ADOPT THE FINDINGS OF THE PUBLIC NECESSITY, CONVENIENCE AND GENERAL WELFARE THAT REQUIRE THE ADOPTION OF THIS ZONING TEXT AMENDMENT PLN 2003-00088 ATTACHED AS EXHIBIT B IN ORDER TO IMPLEMENT A PORTION OF THE CITY'S HOUSING ELEMENT TO ENCOURAGE THE DEVELOPMENT OF AFFORDABLE HOUSING;

AND

RECOMMEND THE PROPOSED INCLUSIONARY HOUSING ORDINANCE (PLN2003-00088) TO THE CITY COUNCIL IN CONFORMANCE WITH EXHIBIT "A" (ZONING TEXT AMENDMENT);

AND

RECOMMEND THAT SECTION 7(A) OF THE PROPOSED ORDINANCE (CONTINUED AFFORDABILITY; CITY REVIEW OF OCCUPANCY) BE AMENDED TO INDICATE THE TERM OF AFFORDABILITY FOR RENTAL PROJECTS BE 99 YEARS INSTEAD OF 55 YEARS;

AND

RECOMMEND THAT SECTION 2(M) OF THE PROPOSED ORDINANCE (DEFINITION FOR PENDING PROJECT-"GRANDFATHER PROVISION") BE AMENDED TO ONLY ALLOW PROJECTS THAT HAVE ENTITLEMENT APPROVALS TO BE "GRANDFATHERED";

AND

RECOMMEND THAT SECTION 8(D) OF THE PROPOSED ORDINANCE (IN-LIEU FEES) BE AMENDED BE AMENDED TO INCLUDE "PROJECTS WHERE THE GENERAL PLAN LAND USE DESIGNATION IS "RESIDENTIAL LOW DENSITY" AND THE ALL THE LOTS WITHIN THE PROJECT ARE AT LEAST 10, 000 SQUARE FEET IN SIZE."

IT WAS MOVED AND SECONDED (WIECKOWSKI/COHEN) THAT THE MOTION BY WEAVER/THOMAS BE AMENDED TO INCLUDE A 30% AFFORDABILITY BE RECOMMENDED IN LIEU OF CURRENT 15% PROPOSAL AND THAT IT APPLY TO ALL PROJECTS OVER TWO UNITS.

The amended portion of the motion failed by the following vote:

AYES: 2 - Wieckowski, Cohen
NOES: 4 - Arneson, Harrison, Thomas, Weaver
ABSTAIN: 0
ABSENT: 1- Manuel
RECUSE: 0

The original motion carried by the following vote:

AYES: 5 - Arneson, Cohen, Thomas, Weaver, Wieckowski
NOES: 1 - Harrison
ABSTAIN: 0
ABSENT: 1 – Manuel
RECUSE: 0

MISCELLANEOUS

Information from Commission and Staff:

- Information from Staff:
 - Senior City Attorney Daniel announced that Michael Barrett would be the new staff person. He had been the Assistant City Attorney in Tracy and had handled the Planning Commission matters there.
- Information from the Commission:
 - Commissioner Thomas suggested that election of new officers be put on the agenda for the end of November or the beginning of December, so that it “didn’t sneak up” on the Commission.
 - A discussion ensued as to who would be appointed for the following year and who would vote in the election for officers.
 - Senior Planner Schwob agreed that the election of officers could be agendized for the December meeting and, if necessary, it could be continued.
 - Commissioner Wieckowski announced that he would not attend the November 7, 2002 meeting.

Meeting adjourned at 11:20 p.m.

SUBMITTED BY:

Alice Malotte
Recording Clerk

APPROVED BY:

Jeff Schwob, Acting Secretary
Planning Commission